

UNIVERSITY PROFESSORS CHARGE CAL/EPA SCIENCE PANEL SKIRTS LAW

Several California university professors are contending Cal/EPA's scientific review panel (SRP) appointment process is violating the law by excluding certain candidates from consideration and allowing members to serve for too long. Some of these professors, who have clashed in the past with SRP members, say they plan to press lawmakers and Cal/EPA officials to begin enforcing SRP term limits and opening the panel to new blood.

The new questions about the science panel's appointment process could spark controversy if changes are proposed, because the panel's opinions often drive Cal/EPA agencies -- especially the Air Resources Board -- to develop aggressive regulations to protect public health.

The claims that the appointment process is not being correctly followed is especially significant now because ARB is pursuing a variety of strict and expensive diesel pollution rules based largely on the SRP's controversial opinions.

Criticism about the SRP appointment process surfaced at a June 4 Senate Rules Committee confirmation hearing for ARB Chairwoman Mary Nichols and another new ARB member, John Balmes.

Before the committee voted to unanimously confirm the appointments of Nichols and Balmes, lawmakers questioned the two board members about ARB's work on designing rules to implement the 2006 climate change law AB 32, as well as diesel air pollution regulations.

While ARB has received widespread attention over its development of greenhouse gas rules under AB 32, the board has also been scrutinized by stakeholders and lawmakers over stringent rules cutting down on diesel particulate matter (PM) emissions from trucks and construction equipment.

In October, the board is expected to adopt a regulation requiring most diesel trucks in the state to install PM reduction devices and turn over older trucks to cut emissions. It is expected to be one of the costliest rules ARB has ever adopted.

Last year, ARB also adopted a similar rule targeting most "off-road" diesel construction equipment in the state. This rule, like the truck regulation, has been met with stiff opposition from industry groups.

ARB is also expected June 25 to discuss with stakeholders a controversial draft report on a revised methodology for estimating premature death tied to diesel PM exposure. The report states that premature deaths per year from PM are actually higher than originally thought, at 3,900 per year. The report adds that PM exposure can be "associated" with up to 24,000 premature deaths statewide annually.

The nine-member SRP, charged with advising ARB and the pesticides department on the health impacts of pollutants, declared diesel PM to be a "toxic air contaminant" (TAC) in 1998. The decision was controversial, with scientists clashing over the studies used to come up with the decision and their conclusions about the true health impacts of PM. ARB has cited the decision in launching a number of rulemakings targeting diesel PM.

Under state law, the Cal/EPA secretary is required to appoint five members to the SRP, the Senate Rules Committee appoints two members, and the Assembly speaker appoints two members. Members can serve three years on the SRP under the law.

SRP terms are "staggered" so that terms of three members expire each year, according to the law.

But at the June 4 ARB confirmation hearing, James Enstrom, an epidemiologist at the University of California-Los Angeles argued that lawmakers and Cal/EPA officials are ignoring the appointment process spelled out in state law. He argued that some members on the SRP have served on the panel for more than 20 years and that the appointment process has "locked out other scientists."

Enstrom, who has publicly disagreed with the SRP's use of research in defining diesel PM as a TAC in 1998, also argued that ARB's push for diesel rules is based on national studies and not California-specific studies looking at PM health impacts.

Due to the billions of dollars at stake in the goods movement industry tied to ARB's forthcoming truck regulation, scientists must be precise, Enstrom argued. "My own data has not been fairly evaluated . . . there are enough California-specific data that should be given preference."

Enstrom in recent years has been criticized by some of scientific misconduct in his research, and of having an industry bias. For example, the American Cancer Society accused him of scientific misconduct in his role in a 2003 *British Medical Journal* study that questioned a suggested link between secondhand smoke and lung cancer. That article sparked a push to eliminate tobacco industry funding of research at UC, according to published reports.

The American Cancer Society charged that Enstrom received funding from a tobacco industry group. After an internal UCLA investigation, Enstrom was cleared of charges of scientific misconduct, according to published reports.

Other professors have also questioned the diesel PM health impacts cited by ARB and the SRP. For example, Henry Miller, a fellow at Stanford University, wrote a recent editorial that appeared in newspapers around the country, questioning the premature death conclusions and costly diesel PM rules.

Following the June 4 Senate committee hearing, Enstrom said he plans to challenge the SRP appointment process largely by pressing lawmakers and Cal/EPA to follow the law regarding term limits.

He argued that officials have made no effort to follow the SRP appointment process described in the Health & Safety Code. The SRP appointment process has "frozen out almost all California scientists, including myself, who have expertise relevant to toxic air contaminants," Enstrom argued.

At the June 4 hearing, Nichols described Enstrom's concerns about the SRP as a "controversial area that deserves to be responded to." Balmes agreed that ARB should respond to the claims. But an ARB spokesman did not respond to inquiries by press time.

In a June 4 letter to the Senate Rules Committee, John Froines, another UCLA scientist who is chairman of the SRP, supported Nichols' confirmation, but also touched on the SRP's role in addressing diesel PM. *A copy of the letter is available at InsideEPA.com.*

Froines stated in the letter that SRP's task is to ensure that the "science behind certain decisions is sound."

The letter added that the SRP's role is at times "difficult and demanding because the determinations are at times controversial," specifically citing the 1998 diesel PM toxic air contaminant decision.

ARB and Office of Environmental Health Hazard Assessment documents determined there was causal evidence that exposure to diesel PM resulted in lung cancer and therefore met the criteria for listing as a toxic air contaminant, the letter states. "Research work since 1998 has confirmed these original conclusions," Froines wrote.

However, the letter did not touch on Enstrom's concerns raised about the SRP appointment process. Froines this week said in an e-mail that the issues raised about the makeup of the SRP should be directed to ARB and addressed by that agency.

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